

BEFORE THE  
HORSE RACING BOARD  
STATE OF CALIFORNIA

In the Matter of the Appeal from Official  
Ruling #024, Board of Stewards, Oak Tree  
Racing Association, October 20, 2004:

COREY S. NAKATANI,

Appellant.

Case No. SAC 04-084

OAH Case No. L-2004110484

**PROPOSED DECISION**

This appeal was heard by Mark T. Roohk, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California on December 2, 2004.

Martin H. Milas, Deputy Attorney General, represented the Horse Racing Board (Board).

Matthew J. Geragos and Christopher Lee Campbell, Geragos & Geragos, represented Appellant Corey S. Nakatani, who was not present at the hearing.

Evidence was received, the matter argued, and the record was closed at the conclusion of the hearing and the case submitted for decision.

**FACTUAL FINDINGS**

1. Appellant is the holder of Thoroughbred Jockey License No. 112150. He is a well-established race rider who has ridden in California for approximately the past 16 years. On March 6, 2004, he was involved in a riding incident at Santa Anita Park, as a result of which he was suspended by that meeting's Board of Stewards for a period of 30 racing days. The incident occurred during the Los Angeles Turf Club meeting which is held every winter at Santa Anita, generally running from late December to mid-April.

2. Appellant filed an appeal of that decision. An administrative hearing on the appeal was held at the Del Mar racetrack on August 26, 2004. On September 15, 2004, following that hearing, the Board issued a decision upholding the decision of the Stewards, and ordering that Appellant "shall be suspended for thirty (30) days to be determined by the Board of Stewards."

3. On October 20, 2004, the Board of Stewards of the Oak Tree Racing Association (Oak Tree Stewards) issued Official Ruling #024 (Ruling), by which Appellant's 30-day suspension was to begin December 26, 2004.<sup>1</sup> These dates coincide with the start of the upcoming Los Angeles Turf Club meeting at Santa Anita, the same meeting at which the underlying incident occurred last racing season. The rationale for this Ruling is that the assigned suspension dates constitute "like days", i.e.—racing days similar to the ones originally assigned last March. (Stewards' Hearing Brief, Exhibit E.)

4. On October 22, 2004, Appellant filed an appeal from that Ruling. Appellant contends that the Oak Tree Stewards exceeded their authority and jurisdiction in ordering that Appellant to begin serving his suspension on December 26, 2004.

### **LEGAL DETERMINATIONS**

Business and Professions Code section 19440, subdivision (a), provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of the Horse Racing Law (Business and Professions Code section 19400 et seq.) Business and Professions Code section 19440, subdivision (b), further provides that the Board may delegate to Stewards any of those powers and duties.

Some of those powers and duties are set forth in the California Code of Regulations. In particular, section 1527 provides in pertinent part that the Stewards have general authority and supervision over all licensees, and are strictly responsible to the Board for the conduct of the race meeting in every particular. More specifically, section 1528 provides as follows:

"The stewards' jurisdiction in any matter commences at such time as entries are taken for the first day of racing at the meeting and extends until thirty (30) days after the close of such meeting. However, the Executive Director or the Board may delegate the authority to adjudicate any matter occurring at any racing meeting to another Board of Stewards at any time. The stewards may suspend the license of anyone whom they have the authority to supervise or they may impose a fine or they may exclude from all inclosures in this State or they may suspend, exclude, and fine. All such suspensions, fines, or exclusions shall be reported immediately to the Board."

As noted, the stewards who imposed the suspension in this matter serve in that capacity for the Oak Tree Racing Association. Because the Oak Tree Racing Association meet at Santa Anita ended on October 31, 2004, the jurisdiction of the Oak Tree Stewards ends 30 days after that, or on November 30, 2004, pursuant to section 1528. Appellant

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<sup>1</sup> There is also evidence that the Oak Tree Stewards, in Official Ruling #003, issued October 2, 2004, had previously determined that Appellant's suspension would begin October 8, 2004. (Appellant's Brief, Exhibit 4.) However, this Ruling is not signed. The Ruling apparently never took effect because of a temporary stay issued by the Superior Court, pursuant to stipulation of the parties, on October 6, 2004. That stay was lifted by the Court on October 14, 2004.

uses this as the basis for his contention that the Oak Tree Stewards exceeded their authority by ordering that his suspension begin on a date *after* November 30, 2004. According to Appellant, the Oak Tree Stewards could only impose a suspension that at the very least begins during the regulatory period of jurisdiction, in this case *before* November 30, 2004.

The Board's interpretation of the regulation differs: the Board of Stewards need only *act* within the regulatory period of jurisdiction, with no requirement that the ordered discipline must take effect within that period. Thus, because the Oak Tree Stewards issued the Ruling on October 20, 2004, well within the period of jurisdiction (and in fact prior to the end of the Oak Tree meet), its order is valid.

Appellant cites no authority for his interpretation of the regulation, and there appears to be no case law on point. However, it is well established that the agency's interpretation of its own regulation is entitled to great weight, and shall be followed unless clearly erroneous. *Judson Steel Corp. v. Workers' Comp. Appeals Board* (1978) 22 Cal.3d 658, 668.

Appellant offers no reason why the Board's interpretation is erroneous, or for that matter why his own interpretation is preferable as a matter of policy. Given the other language found in the regulation, which permits the Board to delegate its authority "to adjudicate any matter occurring at any racing meeting to another Board of Stewards at any time," the Board's interpretation is both reasonable and consistent.

Applied to this matter, the Ruling of the Oak Tree Stewards requiring Appellant to serve his suspension beginning December 26, 2004, at the start of the upcoming Los Angeles Turf Club meet at Santa Anita, rather than during some combination of days during the Oak Tree meet and the fall meet at Hollywood Park, is neither unreasonable nor an abuse of discretion. This is especially true given the incident which resulted in Appellant's suspension occurred during the previous Los Angeles Turf Club meet. Had Appellant not filed an appeal of the original ruling of the Stewards in March, he would have served the majority of his suspension during that meet. (Board Decision, page 5, paragraph 13.) Whatever the extent of a Board of Stewards' authority to assign suspension dates into the future, it is clear that in this case, the Oak Tree Stewards did not exceed the jurisdiction granted them by section 1528.<sup>2</sup>

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<sup>2</sup> Appellant also contends that the Ruling of the Oak Tree Stewards, assigning December 26, 2004, as the starting date for his suspension, was punitive, in that Appellant is being punished for hiring an attorney. It must be noted that this Ruling occurred in October 2004, and that Appellant had an attorney in this proceeding at least as far back as the original administrative appeal. There is no evidence in the record of any kind that any action taken by the Stewards could be construed as "punitive" in nature, at least not beyond their recognized authority to suspend or otherwise discipline a licensee.

**ORDER**

The appeal is denied.

DATED: \_\_\_\_\_

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MARK T. ROOHK  
Administrative Law Judge  
Office of Administrative Hearings